****

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income-tax Appeal No. 1 of 2007
Date of decision: 7.12.2010

M/s Tej Bhan Cotton Ginning & Pressing Factory, Kalanwali

...Appellant

Versus

The Commissioner of Income-Tax, Rohtak

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

Present: Ms. Radhika Suri, Advocate for the appellant.

Ms. Savita Saxena, Advocate for the respondent.

****

ADARSH KUMAR GOEL, J (Oral**).**

This appeal was admitted to consider the following substantial questions of law:-

> "Whether in the facts and circumstances of the case, the ITAT was justified in sustaining the penalty of Rs.7,23,623/- under Section 271(1)(c), even though the assessing officer had not recorded any satisfaction about concealment of income in the assessment order or in the notice under section 274 of the Income Tax Act?"

During the search at the premises of the partner of the assessee and his family members, material was found showing that the stocks were far in excess of the stocks reflected in the stock

****

register of the assessee. On that basis, the additions were made to the declared income of the assessee after giving opportunity to it. The additions were sustained by the CIT(A) as well as by the Tribunal with some modification.

The assessing officer initiated penalty proceedings for concealing/furnishing of inaccurate particulars of income by the assessee and after due consideration the penalty was levied.

The penalty was set aside by the CIT(A) on the ground that in the order of the assessment requisite satisfaction was not recorded in absence of which levy of penalty was without jurisdiction as held by this Court in **Commissioner of Income-Tax Vs. Munish Iron Store [2003] 263 ITR 485.** It was observed:-

> "6.8 In the case of the appellant, the Assessing Officer's act of initiating the penalty under section 271(1)(c), as has been duly mentioned in the following words, "the appellant deliberately furnished inaccurate particulars of its income and consciously concealed the income to the tune of Rs.19,60,871/-, duly meets the requirement of **prima facie satisfaction** as required by Supreme Court at 86 ITR 557 at 563, ibid. In the penalty order, in appeal, the satisfaction of Assessing Officer, while imposing penalty under section 271 (1)(c), is duly inferred. However, following the ratio of decision of jurisdictional Punjab & Haryana High Court reported at 263 ITR 484 (P&H) which is binding in nature, I cancel the penalty."

****

The Tribunal , reversed the view of the CIT(A). It was observed:-

> ".....Now, the question arises whether the assessee has furnished inaccurate particulars of income or has concealed any income. If all the orders up to the Tribunal are analysed, the concealed income even by the Tribunal has been mentioned at Rs.30,81,972/- with its clear finding, it can be said that undisputedly the assessee concealed the particulars of income at least to this extent."
>
> xxx xxxx xxx
>
> ".....In this case, the Assessing Officer mentioned at the end of the assessment order that penalty notice under section 271(1)(c) has been issued for furnishing inaccurate particulars of income, it was found an indication that he had recorded the satisfaction during assessment proceedings clearly goes against the assesssee. Even on this aspect also, still it goes in favour of the revenue. In view of these facts and judicial pronouncements, the penalty so levied by the ld. Assessing Officer is upheld. The stand of the ld. CIT(A) is reversed."

We have heard learned counsel for the parties.

Learned counsel for the assessee submitted that penalty could not be levied as the additions were based on estimate.

****

Reliance has been placed upon the judgment of this Court in **Harigopal Singh Vs. Commissioner of Income-Tax (2002) 258 ITR 85.** It was also submitted that in absence of recording of satisfaction about concealment of income in the order of assessment or in the notice under Section 274 of the Income Tax Act, 1961, the CIT(A) was justified in setting aside the penalty and the Tribunal erred in restoring the same. Reliance has been placed upon the judgment of this Court in **Munish Iron's** case (supra).

Learned counsel for the Revenue supported the view taken by the Tribunal and submitted that judgment in **Harigopal's** case (supra) was distinguishable on facts.

It is clear from the finding recorded by the Tribunal extracted above that the assessee concealed the particulars of income and it is only on search the said particulars could be noticed. The additions were duly sustained upto the Tribunal which became final. The basis of additions was particulars of income which were concealed by the assessee but came to light during search. In these circumstances, satisfaction of the assessing officer that the assessee concealed particulars of assessable income was patent as is clear from the observations in the order of assessment. Thus, judgment in Harigopal has no application. At the end of the assessment order it was mentioned that penalty proceedings have been initiated separately.

In **Commissioner of Income-Tax Vs. Pearey Lal and sons (EP) Ltd. [2009] 308 ITR 438 (P&H)** the matter was considered

****

by this Court. After referring to Manish Iron's case (supra) and other judgments and after noticing the amendment by way of addition of Sub section(1B) to Section 271 vide Finance Act, 2008 with effect from 1.4.1989 to the effect that where while making additions a direction is issued in the order of assessment for initiation of penalty, the same will be deemed to constitute satisfaction for initiation of penalty, it was held that absence of satisfaction could not be inferred from the words that proceedings were being separately initiated. On the contrary, indication in the order of assessment regarding initiation of penalty proceedings itself tantamounted to satisfaction having regard to facts and circumstances of a case. The jurisdictional requirement for penalty was existence of satisfaction and when existence of satisfaction was clear, the format in which satisfaction was recorded or reflected could not affect the validity of levy of penalty. In view of the judgment of this Court in **Pearey Lal's** case (supra), the view taken by the Tribunal cannot be held to be erroneous.

The substantial question of law is answered against the assessee.

Accordingly, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

December 07,2010 **(Ajay Kumar Mittal)**
Pka **Judge**